

II. OPENING STATEMENT [Version for translation into Spanish to be read by Carl Soderberg]

Welcome. In addition to Mr. Siegel, I have with me today Jenine Tankoos, the project officer for review of Puerto Rico's solid waste landfill permit program,

of the Puerto Rico Environmental Quality Board; and

of the Puerto Rico Solid Waste Management Authority.

The purpose of this hearing is to accept comments on EPA's tentative determination to grant the Commonwealth of Puerto Rico approval of its municipal solid waste landfill permit program. Comments may be presented tonight in writing or verbally. All pertinent comments received will be considered in EPA's final determination of adequacy.

I would like to begin with a brief background discussion of the Federal program. Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) will comply with the revised Federal MSWLF Criteria. These revised criteria, which are located in 40 CFR Part 258 define a State as, "any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands."

RCRA Section 4005(c)(1)(C) requires the U.S. Environmental Protection Agency (EPA) to determine whether States the adequacy of state municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal criteria. To fulfill this requirement, the EPA has drafted and is in the process of proposing a State/Tribe Implementation Rule (STIR). This rule will specify the requirements which State programs must satisfy to be determined adequate.

EPA will be approving State MSWLF permit programs prior to the promulgation of the STIR. EPA believes that early approvals have an important benefit. Approved State permit programs provide for interaction between State and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States with approved permit programs can use the site-specific flexibility provided by Part 258 to the extent the State permit program allows such flexibility. EPA notes that regardless of the approval status of any facility, the Federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

EPA interprets the requirements for States or to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

The Part 258 Criteria are self-implementing on their effective date for all MSWLFs in all states. Every standard in Part 258 is designed to be implemented by the owner/operator with or without oversight or participation by a state regulatory agency.

Under RCRA, EPA's role is limited to establishing technical design and operating criteria for MSWLFs and determining the adequacy of state permit programs. For states deemed inadequate by EPA, RCRA section 4005 gives EPA enforcement authority to ensure MSWLF compliance with Part 258 only after EPA determines the state program inadequate. Subtitle D does not provide EPA with Enforcement Authority in states pending an adequacy determination or in states deemed adequate by EPA. EPA does not have permitting authority in any circumstance. The Federal criteria and State requirements operate concurrently regardless of whether a state permit program is deemed adequate or inadequate.

Section 4005(A) of RCRA provides that citizens may use the citizen suit provisions of RCRA section to enforce the Federal MSWLF criteria in 40 CFR Part 258 independent of any State enforcement program. The Part 258 criteria remain in effect even in those states that are approved by EPA. However, as EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with the provisions in a State program approved by EPA would be considered to be in compliance with the Federal criteria. Again, EPA does not have the authority to enforce the Federal criteria unless a State permit program is determined to be inadequate. EPA will not have oversight of a state's permit program once a final determination of adequacy has been made.

On October 8, 1993, the Commonwealth of Puerto Rico submitted an application for adequacy determination. On February 17, 1994, Puerto Rico made a revised submission. On March 23, 1994, EPA published a tentative determination of adequacy for all portions of Puerto Rico's program. Along with the tentative determination, EPA announced the availability for public review of and comment on the application including four public hearings on the application to be held in Puerto Rico.

After EPA has reviewed and considered all public comments received in response to the notice of tentative determination, the Regional Administrator will make a final determination based on whether Puerto Rico's permit program meets all of the statutory and regulatory requirements established by RCRA.

